269 NLRB No. 57

D--1526 Wichita Falls, TX

## UNITED STATES OF AMERICA

# BEFORE THE NATIONAL LABOR RELATIONS BOARD

WICHITA FALLS FOUNDRY, A DIVISION OF 4-R FOUNDRIES, INC.

and

Case/16--CA--10409

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL--CIO

## DECISION AND ORDER

Upon a charge filed by the Union 19 April 1982, the General Counsel of the National Labor Relations Board issued a complaint 27 January 1983 against the Company, the Respondent, alleging that it has violated Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Company has failed to file an answer.

On 17 February 1983 the General Counsel filed a Motion for Summary Judgment. On 28 February 1983 the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Company filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not

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filed within 10 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 10 days of service, ''all the allegations in the complaint shall be deemed to be admitted to be true and shall be so found by the Board.'' Further, the undisputed allegations in the Motion for Summary Judgment disclose that the counsel for the General Counsel, by letter dated 10 February 1983, notified the Company that unless an answer was received 16 February 1983 a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment. 1

On the entire record, the Board makes the following

# Findings of Fact

## I. Jurisdiction

The Company, a Texas corporation, manufactures metal castings at its facility in Wichita Falls, Texas, where it is projected to annually sell and ship from its facility goods and materials valued in excess of \$50,000 directly to points outside the State of Texas. We find that the Company is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

# II. Alleged Unfair Labor Practices

On or about 13 November 1981, the Respondent purchased the Wichita Falls, Texas metal casting foundry of Dana Corporation, including the equipment, supplies, and materials. Since the date, until on or about 12 April 1982, with

<sup>&</sup>lt;sup>1</sup> In granting the General Counsel's Motion for Summary Judgment, Chairman Dotson specifically relies on the total failure of the Respondent to contest either the factual allegations or the legal conclusions of the General Counsel's complaints. Thus, the Chairman regards this proceeding as being essentially a default judgment which is without precedential value.

no hiatus in operation, the Respondent had been engaged in the same business operations, at the same location, selling the same product to substantially the same customers, and had a majority of its employees who were previously employees of Dana Corporation. By virtue of the above, the Respondent has continued the employing entity and is a successor of Dana Corporation.

Since some time prior to 13 November 1981, the Charging Party has been designated the exclusive collective-bargaining representative for the following employees of the Respondent:

All maintenance and production employees employed by the Respondent at its plant located at 307 Barwise, Wichita Falls, Texas, and excluding all other employees including office clerical employees, office janitors, technical employees, drafters, drafting room employees, accounting employees, outside service employees, guards, watchmen and supervisors as defined in the Act.

For a number of years, the Charging Party and the Respondent's predecessor, Dana Corporation, have executed collective-bargaining agreements dealing with wages, hours, and conditions of employment of the employees in the above-described unit, the most recent of which having effective dates of 16 August 1980 through 14 August 1983. The Respondent, in the sales purchase agreement between itself and its predecessor, agreed to maintain the same terms and conditions for bargaining unit employees as had been in effect under its predecessor, Dana Corporation.

Furthermore, on or about 24 November 1981, the Respondent agreed by letter to recognize the Charging Party as the representative of employees in the above unit. On or about 12 April 1982 the Respondent ceased operating its facility in Wichita Falls, Texas. The Charging Party, on or about 28 April 1982 requested that the Respondent bargain with it concerning employees' severance pay, accrued vacation pay, and other matters connected with the closing of the facility. Since that time, the Respondent has failed and refused, and continues to fail and refuse to bargain collectively with the Charging Party

over the effects of the closing of its facility. Accordingly, we find that, by the conduct described above, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act.

### Conclusions of Law

-By failing and refusing to bargain about the effects of the closing of its facility at Wichita Falls, Texas, the Company has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

#### Remedy

Having found that the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. To remedy the Respondent's failure to bargain over the effects of ceasing operations, we shall order the Respondent to bargain with the Union, on request, concerning the effects of ceasing operations. Further, in order to assure meaningful bargaining and to effectuate the purposes of the Act, we shall accompany our order to bargain with a requirement that the Respondent provide pay to unit employees in a manner similar to that required in <a href="Iransmarine" Navigation">Iransmarine</a> Navigation <a href="Corp.">Corp.</a>, 170 NLRB 389 (1968).

## ORDER

The National Labor Relations Board orders that the Respondent, Wichita Falls Foundry, a Division of 4-R Foundries, Inc., Wichita Falls, Texas, its officers, agents, successors, and assigns, shall

### Cease and desist from

- (a) Failing and refusing to bargain with International Association of Machinists and Aerospace Workers, AFL--ClO, with respect to the effects on the bargaining unit employees of its decision to close its Wichita Falls, Texas facility.
- (b) In any like or related manner interefering with, restraining, or coercing employees in the exercise of rights guaranteed them by Section 7 of the Act.
  - 2. Take the following affirmative action necessary to effectuate the policies of the Act.
  - (a) Bargain collectively with International Association of Machinists and Aerospace Workers, AFL--C10, with respect to the effects on its bargaining unit employees of its decision to close its Wichita Falls, Texas facility, and reduce to writing any agreement reached as a result of such bargaining.
  - (b) Pay the bargaining unit employees amounts at the rate of their normal wages when last in the Respondent's employ from 5 days after the date of this Order until the occurrence of the earliest of the following conditions: (1) the date the Respondent bargains to agreement with the Union on those subjects pertaining to ceasing operations; (2) a bona fide impasse in bargaining; (3) the failure of the Union to request bargaining within 5 days of the Respondent's notice of its desire to bargain with the Union; or (4) the subsequent failure of the Union to bargain in good faith; but in no event shall the sum paid to any of the employees exceed the amount each would have earned as wages from the time the Responent ceased its Wichita Falls, Texas operation to the time each secured equivalent employment elsewhere, or the date on which the Respondent shall have offered to bargain, whichever occurs first, provided, however, in no event shall the sum be less than the employees

would have earned for a 2-week period, at their normal wage rate, when last employed by the Respondent.

- (c) Mail an exact copy of the attached notice marked ''Appendix''<sup>2</sup>
  to International Association of Machinists and Aerospace Workers, AFL--CIO,
  and to all the bargaining unit employees who were employed at its former
  Wichita Falls, Texas facility. Copies of said notice, on forms provided by the
  Regional Director for Region 16, after being signed by its authorized representative, shall be mailed immediately upon receipt thereof, as herein directed.
  - (d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C.

21 March 1984

	Donald L. Dotson,	Chairman
	Don A. Zimmerman,	Member
	Robert P. Hunter,	Member
(SEAL)	NATIONAL LABOR RELATIONS BOARD	

If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading ''POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'' shall read ''POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.''

## APPENDIX

#### NOTICE TO EMPLOYEES

Posted by Order of the National Labor Relations Board An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain collectively with International Association of Machinists and Aerospace Workers, AFL-CIO, with respect to the effects of our decision to close our facility located at 307 Barwise, Wichita Falls, Texas, on the bargaining unit employees who were employed there, and WE WILL reduce to writing any agreement reached as a result of such bargaining. The collective-bargaining unit is:

All maintenance and production employees employed by us at our Wichita Falls, Texas, plant, but excluding all other employees including office clerical employees, office janitors, technical employees, drafters, drafting room employees, accounting employees, outside service employees, guards, watchmen and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL make whole bargaining unit employees who were employed at the Wichita Falls, Texas facility for any losses which they may have sustained by virtue of our failure and refusal to bargain collectively with the Union over severance pay, accrued vacation, and other matters connected with the closing of the facility.

	WICHITA FALLS FOUN DIVISION OF 4-R FO	•	
	(Employer)		
Dated By	(Representative)	(Title)	

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, Federal Office Building, Room 8A24, 819 Taylor Street, Fort Worth, Texas 76102, Telephone 817--334--2941.